

**Title 9--DEPARTMENT OF MENTAL HEALTH
Division 10--Director, Department of Mental Health
Chapter 5--General Program Procedures**

PROPOSED AMENDMENT

9 CSR 10-5.190 [Criminal Record Review] Background Screening for Employees and Volunteers. The department proposes to amend the title of the rule and sections (1) through (11).

PURPOSE: This amendment will correct grammatical errors, update language, and incorporate revisions provided under Senate Bill No. 184, passed into law by the 92 General Assembly and subsequently signed by the governor. These revisions add several offences to those that disqualify a person from employment, and revise the listing of those crimes for which no exception can be granted.

*PURPOSE: This rule establishes standards for obtaining [a criminal record review] **background screening** for certain staff **and volunteers** in residential facilities, day programs or specialized service operated or funded by the Department of Mental Health.*

(1) For the purposes of this rule, residential facilities, day programs and specialized services are divided into two (2) categories, as follows:

(A) Category I. Those that are certified or licensed exclusively by the Department of Mental Health (**DMH**) or, although not certified or licensed, are funded by the department. Specifically this category includes:

1. Agencies certified by [the Department of Mental Health] **DMH** as community psychiatric rehabilitation programs (CPRP) **and/or outpatient programs**;
2. Agencies certified by [the Department of Mental Health] **DMH** in the community-based waiver certification program;
3. Agencies certified by the Division of Alcohol and Drug Abuse;
4. Facilities that have contractual arrangements with the department but are exempt from the department's licensing and certification rules due to accreditation or other reason; and
5. Facilities and day programs which are licensed by the department and do not have a license from another state agency; and

(B) Category II. Those that, in addition to a license or certificate from [the Department of Mental Health] **DMH**, have a license or certification from another state agency. Specifically, this category includes facilities licensed by the [Division of Aging, the] Division of Family Services [and] **or the Department of Health and Senior Services**; also included are intermediate care facilities/mental retardation (ICF/MR). Facilities and agencies included in Category II are subject to rules regarding criminal record review as promulgated by the state agency which licenses or certifies them and are not subject to sections (2) through (7) of this rule. However such agencies are subject to sections (8), (9), (10) and (11) regarding disqualifying crimes.

(2) This rule applies to--

- (A) Staff;
- (B) Volunteers who are recruited as part of an agency's formal volunteer program [and] **but** does not apply to volunteers who assist individuals as a friend would by providing assistance with shopping, transportation, recreation, etc.; and

(C) Members of the *[providers]* **provider's** household who have contact with residents or clients, except for minor children.

(3) Each residential facility, day program or specialized service defined under Category I above shall **make the following inquiries for all new employees and volunteers:**

(A) *[make an]* **An inquiry with the *[Department of Social Services]* Department of Health and Senior Services** to determine whether *[any]* **the** new employee or volunteer having contact with residents or clients is listed on the *[Division of Aging's employment]* **employee** disqualification list **of the Department of Social Services or the Department of Health and Senior Services;**

(B) **An inquiry with the Department of Mental Health to determine whether the new employee or volunteer is on the DMH disqualification registry; and**

(C) **A criminal background check with the state highway patrol. The request for the background check shall not require fingerprints and shall be in accordance with requirements of the state highway patrol under Chapter 43, RSMo. The facility, program or service may use a private investigatory agency to conduct this review.**

[(4) Each residential facility, day program or specialized service defined under Category I above shall conduct a criminal background check with the state highway patrol for new staff and volunteers who have contact with patients, residents or clients. The request for the background check shall not require fingerprints and shall be in accordance with requirements of the state highway patrol under Chapter 43, RSMo. The facility, program or service may use a private investigatory agency to conduct this review.]

[(5)] **(4) The criminal background check and *[inquiry with the Department of Social Services]* shall be initiated not later than two (2) working days of hiring the employee or selecting the volunteer** **inquiries required under section (3) of this rule shall be initiated prior to the employee or volunteer having contact with residents, clients or patients.**

[(6)] **(5) *[In accordance with section 660.317, RSMo, each]* Each** residential facility, day program and specialized service included under Category I shall require all new applicants for employment or volunteer positions involving contact with residents or clients to--

(A) Sign a consent form authorizing a criminal record review with the highway patrol, either directly through the patrol or through a private investigatory agency;

(B) Disclose his/her criminal history, including any conviction or a plea of guilty to a misdemeanor or felony charge and any suspended imposition of sentence, any suspended execution of sentence or any period of probation or parole; and

(C) Disclose if s/he is listed on the employee disqualification list of the *[Division of Aging]* **Department of Social Services or the Department of Health and Senior Services, or the DMH disqualification registry.**

[(7)] **(6) Each agency shall develop policies and procedures regarding the implementation of this rule and the disposition of information provided by the criminal record review. At a minimum the guidelines shall address--**

(A) Procedures for obtaining the criminal record review;

(B) Procedures for confidentiality of records; and

(C) Guidelines for evaluating information received through the criminal record review which establish a clear boundary between those convictions which, by statute,

must exclude an individual from service, and those convictions which would not automatically exclude an individual.

~~[(8)]~~ **(7) [Convictions] Offenses** which under section[s] 630.170 ~~[and 660.317]~~, RSMo ~~[exclude]~~ **disqualify** a person from service are ~~[the following:]~~ **as follows.**

(A) A person ~~[who has been convicted of, found guilty of, pled guilty to or nolo contendere to any of the following crimes:]~~ shall be disqualified from holding any position in the agency~~[:]~~ **if that person -**

1. Has been convicted of, found guilty of, pled guilty to or nolo contendere to any of the following crimes:

~~[1.]~~ **A.** Physical abuse or Class I Neglect of a patient, resident or client; or

~~[2.]~~ **B.** Furnishing unfit food to patients, residents or clients~~[:and]~~ .

2. Is listed on the DMH disqualification registry; or

3. Is listed on the employee disqualification list of the Department of Health and Senior Services or Department of Social Services.

~~[(B)]~~ **(C)** A person who has been convicted of, found guilty to, pled guilty to or nolo contendere to any of the following crimes shall be disqualified from holding any position having contact with patients, residents or clients in the agency. The crimes listed below are not disqualifying unless they are felonies, except for failure to report abuse and neglect to the Division of ~~[Aging]~~ **Health and Senior Services**, which is a Class A misdemeanor. The disqualifying crimes are:

1. First or second degree murder;
2. Voluntary manslaughter (includes assistance in self-murder);
3. Involuntary manslaughter;
4. First or second degree assault;
5. Assault while on school property;
6. Unlawful endangerment of another;
7. First or second degree assault of a law enforcement officer;
8. Tampering with a judicial officer;
9. Kidnapping;
10. Felonious restraint;
11. False imprisonment;
12. Interference with custody;
13. Parental kidnapping;
14. Child abduction;
15. Elder abuse in the first degree or the second degree;
16. Harassment;
17. Stalking;
18. Forcible rape;
19. First or second degree statutory rape;
20. Sexual assault;
21. Forcible sodomy;
22. First or second degree statutory sodomy;
23. First or second degree child molestation;
24. Deviate sexual assault;
25. First degree sexual misconduct;
26. Sexual abuse;
27. Endangering the welfare of a child;
28. Abuse of a child;
29. Robbery in the first degree or second degree;

30. Arson in the first or second degree;
31. First or second degree pharmacy robbery;
32. Incest;
33. Causing catastrophe;
34. First degree burglary;
35. Felony count of invasion of privacy;
36. Failure to report abuse and neglect to the Department of Social Services as required under subsection 3 of section 198.070, RSMo;
37. Any equivalent felony offense.

[(9)] **(8)** Any person disqualified from employment under this rule may *[appeal the disqualification to]* **request an exception from the [department's] DMH Exceptions Committee in accordance with 9 CSR 10-5.210 Exceptions Committee Procedures.**

(A) *[The request shall be written and may not be made more than one (1) time every twelve (12) months.*

(B) *The request may be granted if a clear showing has been made that--*

1. *The person will not commit any additional acts for which the person had originally been disqualified; and*
2. *The person will not commit any other acts which would be harmful to a patient, resident or client of a facility, program or service.*

(C) *The Exceptions Committee may grant the appeal subject to conditions and failure to comply with such conditions may result in the person being again disqualified.*

(D) *The decision of the Exceptions Committee shall not be subject to appeal.*

(E) *The right to [receive]* **request an exception under this subsection shall not apply to persons who are disqualified due to being listed on the employee disqualification registry of the Department of Social Services or Department of Health and Senior Services, nor does it apply to persons who are disqualified due to [convicted of] any of the following crimes:**

1. First or second degree murder;
2. First or second degree statutory rape;
3. Sexual assault;
4. Forcible sodomy;
5. First or second degree statutory sodomy;
6. First or second degree child molestation;
7. Deviate sexual assault;
8. Sexual misconduct involving a child;
9. First degree sexual misconduct;
10. Sexual abuse;
11. Incest;
12. *[First or second degree endangering the welfare of a child]* **Causing catastrophe;**
13. Abuse of a child;
14. First *[or second]* degree pharmacy robbery; **or**
15. *[First degree burglary; or*
16. *] Forcible rape.*

[(10)] **(9)** For the purposes of this rule, a verdict of not guilty by reason of insanity (NGRI) is not per se disqualifying. A suspended imposition of sentence (SIS) or suspended execution of sentence (SES) is disqualifying.

~~[(11)]~~ **(10)** A provider shall not hire any person who has committed a disqualifying crime as identified in section ~~[(8)]~~ **(7)** of this rule, unless the person has received an exception from the department. However, the provider retains the discretionary authority to deny employment to persons who--

- (A) Have committed crimes not identified as disqualifying;
- (B) Have received an exception from the Exceptions Committee; or
- (C) Have received a verdict of Not Guilty by Reason of Insanity.

*AUTHORITY: sections 630.170, 630.710 and 660.317, RSMo Supp. 1997 and 630.655, RSMo 1994. * Emergency rule filed Aug. 15, 1997, effective Aug. 28, 1997, expired Feb. 26, 1998. Original rule filed Aug. 15, 1997, effective March 30, 1998. Amended: Filed Oct. 29, 1998, effective May 30, 1999. Amended: Filed November 3, 2003.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500.00 in the aggregate.

PRIVATE COSTS: This proposed amendment will not cost private entities more than \$500.00 in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment by writing to Richard H. Overmann, Regulatory Process Coordinator, Office of Quality Management, Department of Mental Health, P.O. Box 687, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

